

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In Re:

Michelle E. Dailey.

Debtor.

Chapter 13

Tax Payer ID: xxx-xx-3662

Case No. 1-24-10831-CLB

Hon. Carl L. Bucki

Michelle E. Dailey
111 Brandywine Drive
Salamanca, NY 14779

A.P. No.: 25- _____ -CLB

Plaintiff,

vs.

Alden State Bank
13216 Broadway St
Alden, NY 14004

COMPLAINT

Defendant.

1. NOW COMES the Plaintiff, Michelle E. Dailey (hereinafter the "Debtor"), by and through Michael A. Weishaar, Esq., one of her attorneys at Gleichenhaus, Marchese & Weishaar, PC and hereby respectfully submits this Adversary Complaint seeking avoidance of a preferential judgment, on an antecedent debt, pursuant to 11 U.S.C §§ 547 and 550 obtained by Alden State Bank (hereinafter the "Defendants") prior to commencement of the above-chapter 13 bankruptcy.

NATURE OF THE CASE

1. This is an adversary proceeding to determine the extent (if any) to which the Defendant is a secured creditor of the Plaintiff.

JURISDICTION AND VENUE

2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1334(a), (b). This is a core proceeding pursuant 28 U.S.C. §§ 157(a), (b)(2)(A), (B), (I), (K).

3. An adversary proceeding is necessary pursuant to Fed. R. Bankr. P. 7001 et. seq.

4. Venue is proper in the Western District of New York pursuant to 28 U.S.C. §§ 1391(b), 1409. The Plaintiff and Defendants are citizens of New York and resides in Erie County.

5. Resolution of this Adversary Proceeding directly impacts the amount of money available from sale of Property of the Estate. As a result, there is a case in controversy between the parties.

PARTIES

6. Michelle E. Dailey is an individual with a residence located at 111 Brandywine Drive, Buffalo, NY 14221.

7. Michelle E. Dailey is the Plaintiff in this Adversary Proceeding.

8. Alden State Bank is a company having a place of business in the County of Erie, State of New York and are/were creditors of the debtor/plaintiff as more fully set forth *infra*.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

9. The Plaintiff re-alleges and incorporates by reference the allegations of paragraphs 1 through 8 *supra* as though fully set forth herein.

10. Debtor is an individual and filed her voluntary petition for relief under chapter 13 of the United States Bankruptcy Code (the "Bankruptcy Code"), on July 30, 2024 (hereinafter the "Petition Date") in the above-captioned proceeding.

11. Within 90 days prior to the filing of the bankruptcy petition, the defendant caused a judgment to be entered by the Erie County Clerk; said judgment filed in the Erie County Clerk's Office on or about June 18, 2024 in the approximate principal amount of \$124,566.72, plus interest from the date the judgment was entered, at Liber 363 of Liens page 3935. (A copy of the judgment attached hereto as Exhibit "A").

12. Upon information and belief, the nature of the action, resulting in the aforementioned judgment was on account of an antecedent, unsecured debt owed by the debtor to the defendant.

13. Upon information and belief the debtor was insolvent at the time the judgment entered.

14. The judgment may enable the defendant to receive more than it would receive under the Bankruptcy Code if the judgment had not been entered.

15. By virtue of the foregoing, the said transfer(s) constitutes a preferential transfer(s) avoidable by the plaintiff under Bankruptcy Code §547.

16. By reason of the foregoing, an Order should be entered avoiding the judicial lien in favor of Alden State Bank, filed in the Erie County Clerk's Office on or about June 18, 2024 (42 days prior to the Order of Conversion) in the approximate principal amount of \$124,566.72, plus interest from the date the judgment was entered.

WHEREFORE, the plaintiff prays that this Honorable Court enter an Order avoiding the Judicial Lien of Defendant as preferential, pursuant to 11 U.S.C. §547 and that she have such other and further relief as is just and proper.

Dated Buffalo, New York
January 9, 2025

/s/ Michael A. Weishaar, Esq.
Michael A. Weishaar, Esq.
Gleichenhaus, Marchese & Weishaar, PC
Attorney for Plaintiff
930 Convention Tower
43 Court Street
Buffalo, New York 14202
(716) 845-6446

To: Alden State Bank
Attn: Steven J. Woodard, President, or CEO
13216 Broadway St
Alden, NY 14004

Rupp Pfalzgraf, LLC
counsel for the Defendant
1600 Olympic Tower
Buffalo, NY 14202 (716) 854-340